

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of:
CITY OF BOSTON
and
SPRINT NEXTEL CORPORATION,
Relating to Rebanding Issues in the 800 MHz
Band

PS Docket No. 07-69

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NEAL R. GROSS & CO., INC.
1323 RHODE ISLAND AVENUE, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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PREHEARING CONFERENCE

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IN THE MATTER OF:

CITY OF BOSTON

and

SPRINT NEXTEL CORPORATION

Relating to Rebanding
Issues in the 800 MHz Band

PS Docket No.
07-69

Mediation No.
TAM-11155

Wednesday,
May 30, 2007

Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554

The hearing was convened, pursuant to
notice, at 9:30 a.m.

BEFORE:

RICHARD L. SIPPEL
Chief Administrative Law Judge

APPEARANCES:

On Behalf of the City of Boston:

Of: ROBERT H. SCHWANINGER, JR., ESQ.
Schwaninger & Associates, P.C.
1331 H Street, N.W.
Suite 500
Washington, D.C. 20005
(202) 347-8580

On Behalf of Sprint Nextel:

Of: HOWARD M. LIBERMAN, ESQ.
PATRICK R. MCFADDEN, ESQ.
LAURA H. PHILLIPS, ESQ.
Drinker, Biddle & Reath, LLP
1500 K Street N.W.
Suite 1100
Washington, D.C. 20005-1209
(202) 842-8465

ALSO PRESENT:

GARY SCHONMAN, ESQ.
Counsel for Chief Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Suite 4C-237
Washington, DC 20554
(202) 418-1420

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P-R-O-C-E-E-D-I-N-G-S

(9:34 a.m.)

ADMIN. JUDGE SIPPEL: First prehearing conference, this case of Boston versus Nextel Sprint, or Sprint Nextel Corporation. Let me first take the notices. Just identify yourself for the records, please, starting with Bureau counsel.

MR. SCHONMAN: Good morning, Your Honor. Gary Schonman on behalf of the Chief Enforcement Bureau.

ADMIN. JUDGE SIPPEL: And on behalf of Boston, the City of Boston.

MR. SCHWANINGER: Good morning. Robert Schwaninger, of Schwaninger & Associates, on behalf of Boston.

ADMIN. JUDGE SIPPEL: Good morning, Mr. Schwaninger. And on behalf of Sprint Nextel?

MR. LIBERMAN: Good morning, Your Honor. Howard Liberman.

ADMIN. JUDGE SIPPEL: Mr. Liberman.

MR. LIBERMAN: Hello, and with me are Laura Phillips and Patrick McFadden, for Sprint Nextel

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1 Corporation.

2 ADMIN. JUDGE SIPPEL: Ms. Phillips, and
3 your name, sir, is?

4 MR. MCFADDEN: Patrick McFadden.

5 ADMIN. JUDGE SIPPEL: Patrick McFadden.
6 Okay.

7 Now, where to start? First of all, let me
8 acknowledge that there is a pending motion to delete
9 and combine issues. And the pleading cycle authorizes
10 a reply pleading. Do you intend to file a reply, Mr.
11 Schwaninger?

12 MR. SCHWANINGER: I will -- yes, I will
13 file a reply.

14 ADMIN. JUDGE SIPPEL: Okay. Can you tell
15 me when?

16 MR. SCHWANINGER: How about by the end of
17 the day?

18 ADMIN. JUDGE SIPPEL: Well, that's fine.
19 I don't want to push you. That's fine. Let's just
20 leave it at that.

21 And you have been following my
22 housekeeping rules about getting faxes and emailing,

1 that type of thing?

2 MR. SCHWANINGER: Yes, Your Honor.

3 ADMIN. JUDGE SIPPEL: I think you all have
4 my email address, but, Ms. Gossey and I want to be --
5 receive emails as well as the faxes of what you're
6 filing and exchanging. It is very helpful. The
7 reason for the -- primary reason for the faxes is that
8 I don't, I do not always look at my emails, and, but
9 the fax is, it never gets missed. So I want to be
10 sure I have that hard copy coming in.

11 Okay, there's a request to eliminate Issue
12 C, which is kind of a -- well, obviously the parties,
13 having read the motion, Mr. Schwaninger's motion, and
14 the Sprint Nextel response, or opposition, there is
15 agreement that the Issue C, which would be to, I'm
16 paraphrasing now, but was basically to determine
17 appropriate contractual language, that that be
18 eliminated from the case because it's already been
19 decided; it's moot. Is that a fair characterization?

20 MR. LIBERMAN: Yes, Your Honor.

21 MR. MCFADDEN: Yes, Your Honor.

22 ADMIN. JUDGE SIPPEL: Does the Bureau have

1 any objection to that?

2 MR. SCHONMAN: No, sir.

3 ADMIN. JUDGE SIPPEL: Then it's -- okay,
4 but that issue, then, is gone. I'll issue an
5 appropriate order. I'm not going to promise it today,
6 Mr. Schwaninger, but it'll come out forthwith.

7 Now, my next order of business here is the
8 status of what I would characterize as cooperative
9 discovery. Has there been any preliminary discussions
10 between counsel on this, and who would like to address
11 that first?

12 MR. SCHWANINGER: You took the lead in the
13 meeting, go right ahead.

14 MR. LIBERMAN: Thank you, Your Honor --

15 ADMIN. JUDGE SIPPEL: Mr. Liberman?

16 MR. LIBERMAN: -- first, pursuant to your
17 order, we did have a meeting, and we came up with a
18 number of tentative dates, subject to Your Honor, of
19 course. The first we agreed to is September 7 would
20 be the date for completing discovery. I believe we
21 meant that to be completing initiation of all
22 discovery. There might be responses trailing in after

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1 that, but --

2 ADMIN. JUDGE SIPPEL: Okay.

3 MR. LIBERMAN: -- no discovery would be
4 initiated after September 7.

5 ADMIN. JUDGE SIPPEL: Okay. Without
6 leave, unless there's, obviously, if something comes
7 up and you need more time, I'll get a motion.

8 MR. LIBERMAN: We'll request leave,
9 exactly. And that by October 5, or maybe on October
10 5, would be a tentative date for exchanges of witness
11 lists and written cases-in-chief, written direct
12 cases.

13 ADMIN. JUDGE SIPPEL: Yes.

14 MR. LIBERMAN: October 5, again, subject
15 to Your Honor's agreement. And responses to that
16 would be due by October 19. I think that would be
17 rebuttal witnesses and rebuttal testimony by October
18 19.

19 And then, I believe we all agreed that the
20 hearing could take place any time after October 29,
21 and that we believe two days would be sufficient for
22 the hearing. At this point, we believe that.

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1 ADMIN. JUDGE SIPPEL: All right. Well,
2 that's very -- that's certainly short and succinct.
3 Two-day hearing any time -- what is the date? After
4 any --

5 MR. LIBERMAN: Any time after October 29.

6 ADMIN. JUDGE SIPPEL: 10/29, post 10/29,
7 two-day hearing.

8 MR. LIBERMAN: Right. October 29 is a
9 Monday, so any time after the 29th.

10 ADMIN. JUDGE SIPPEL: All right. Well,
11 that should be -- we should be able to accommodate
12 that. Did I not bring my calendar? It's the most
13 important document I have, and I've got to bring it.
14 Let's see, this tells me that you -- I don't know how
15 long this took, but you certainly have been busy.

16 October 29, okay, any time after that. I
17 have tickets to Don Giovanni, but I don't think
18 anybody's interested in that, on the 29th. Let's see
19 --

20 MR. LIBERMAN: Perhaps on the next morning
21 you'll be in a good mood for a hearing.

22 ADMIN. JUDGE SIPPEL: That's right.

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1 That's true. I don't know, did you want to go that
2 fast? I'm trying to see if there's any tricky
3 holidays or dates.

4 MS. GOSSEY: The 12th is a holiday, of
5 November.

6 ADMIN. JUDGE SIPPEL: 12th of November?
7 This is Ms. Gossey, by the way. Yes, I see it on
8 Sunday, with Veterans, but that's probably observed on
9 Monday, the 12th.

10 MS. GOSSEY: The Government does, yes.

11 ADMIN. JUDGE SIPPEL: Okay. Election Day
12 is the 6th, which is no big deal, I don't think. I
13 mean, it is a big deal, I'm sorry, but, I mean, I
14 didn't mean to say it that way, but, I mean, it
15 shouldn't interfere with our schedule here. It's a
16 toss-up.

17 MR. SCHWANINGER: I do have some Election
18 Day duties.

19 ADMIN. JUDGE SIPPEL: All right. We won't
20 do that, then. Why don't we do it on the -- gee, I
21 could -- can you start it on the -- would you really
22 be prepared to go on the 30th? I mean, I don't mean

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1 to push it that tight.

2 MR. LIBERMAN: I think so.

3 MR. SCHWANINGER: Yes.

4 MR. LIBERMAN: October 30th would be fine
5 with us.

6 MR. SCHWANINGER: It's fine.

7 MR. LIBERMAN: I believe. The 31st is
8 Halloween, but that shouldn't be a factor.

9 ADMIN. JUDGE SIPPEL: No, we'll --

10 MR. SCHWANINGER: I haven't dressed up in
11 years.

12 ADMIN. JUDGE SIPPEL: Well, we'll break an
13 hour early if we have to for Halloween purposes. We
14 may have some young children that they need to walk
15 around with. Start, okay, anyway, so start hearing at
16 9:30 a.m. on the 30th of August.

17 MR. LIBERMAN: October.

18 MS. GOSSEY: October.

19 ADMIN. JUDGE SIPPEL: I'm sorry, the 30th
20 of October, yes, in this courtroom. And then we'll
21 have the rest of the balance of the week to complete
22 it, but if the two-day estimate, we'll certainly

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1 strive to meet the two-day estimate. And that will be
2 it.

3 Now, I did make a comment in my prehearing
4 conference order, this is FCC 07M-13, footnote 3 talks
5 about --

6 MS. GOSSEY: I don't think it's 13.

7 ADMIN. JUDGE SIPPEL: Isn't it? FCC 07M
8 --

9 MS. GOSSEY: 69.

10 ADMIN. JUDGE SIPPEL: No, that's not it.
11 I'm talking about the prehearing conference order.

12 MS. GOSSEY: Oh, okay.

13 ADMIN. JUDGE SIPPEL: Anyway, I was
14 interested in getting as much stipulation work done as
15 possible. I mean, there's been quite a massive
16 record, or certainly a very complete record, of these
17 issues that has come up the chain through negotiation
18 and mediation, etc., and then a decision of the
19 Bureau. Have you given any thought to that?

20 MR. SCHWANINGER: Yes.

21 ADMIN. JUDGE SIPPEL: You're not against
22 it, Mr. Schwaninger?

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1 MR. SCHWANINGER: I've given thought to
2 it. We haven't begun a discussion regarding it.

3 MR. LIBERMAN: I think the answer to that
4 question will become more clear after some discovery.
5 I think both sides -- we also discussed discovery at
6 our meeting, and I think both sides are going to
7 engage in some discovery, perhaps a few depositions
8 and interrogatories within the limitations that Your
9 Honor has set forth. And perhaps after we see
10 responses and hear deposition testimony, we can try
11 for some stipulations.

12 ADMIN. JUDGE SIPPEL: Okay, well, that's
13 fine. That's fair. And you can start your discovery,
14 of course, today, as far as giving notice is
15 concerned. I shouldn't have -- I mean, unless there's
16 a motion to compel or something, I shouldn't have to
17 get involved in that at all.

18 Let me think. Do keep me apprised, I
19 mean, if you're sending out notices to depose, by all
20 means serve me with -- I'm sure you would, anyway, but
21 give me an idea in terms of what's going on time-wise
22 and volume-wise.

1 The only -- I just want to just give my,
2 what is logistically what I'm getting, what gives me
3 the concern is with the documents, two questions on
4 the documents.

5 First of all, the volume that would be --
6 that you would anticipate would come into the record,
7 or you would offer into evidence. And my thinking
8 with the stipulation and with the -- there's lots of
9 ways of doing this, but what I'm trying to do is that
10 I'm trying to minimize documents to the greatest
11 extent possible, without, obviously, undercutting your
12 right to a hearing.

13 And the second concern I have is with
14 respect to confidentiality, and which, I'll tell you
15 right up front that my long-held philosophy is that
16 this is a public hearing, and there should be a public
17 record that describes what went on at the hearing.

18 Now, as far as your discovery is
19 concerned, I mean, that's confessional, I mean, that's
20 private all the way, far as I'm concerned, anyway. So
21 whatever you agree to on that is no problem, but I'd
22 like to be -- I'd like to ask you to give some thought

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1 to that, the two points being least number of
2 documents, the smallest record possible, in other
3 words, and also confidentiality.

4 Okay, the normal way is that there's an
5 agreed to and stipulated order, consent order for
6 confidential treatment, but there's a lot of
7 boilerplate that goes into those that I'd really like
8 you to, if that's what it comes down to, that you
9 really tone it down as much as you can and look for
10 things that really are not going to be a problem as
11 far as business practices or something like that,
12 because we don't want to give your competitors an
13 advantage, but, like I say, I want to keep it a public
14 record.

15 Okay, that's all I have. Now, is there
16 anything else anybody else has?

17 MR. SCHWANINGER: Not at this time.

18 ADMIN. JUDGE SIPPEL: Mr. Schonman?

19 MR. SCHONMAN: No, sir.

20 ADMIN. JUDGE SIPPEL: Okay. It's five to
21 ten by that clock, and we are in recess until the 30th
22 of October, unless we have to -- at my call otherwise.

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1 Yes, Mr. Liberman?

2 MR. LIBERMAN: Are you going to issue an
3 order with the dates?

4 ADMIN. JUDGE SIPPEL: I will.

5 MR. LIBERMAN: Okay.

6 ADMIN. JUDGE SIPPEL: I will. I think I
7 can -- yes, I will. I certainly will. Certainly
8 will. And also an order with respect to Issue C. And
9 then I'm waiting for the reply, and I'll take a hard
10 look at that, get you a decision on that as soon as I
11 can. Okay?

12 Thank you very much. We're in recess
13 until 30 October unless otherwise called. Thank you.

14 (Whereupon, the prehearing conference was
15 concluded at 9:47 a.m.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

CITY OF BOSTON AND SPRINT NEXTEL CORPORATION

Name of Hearing

PS DOCKET NO. 07-69

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

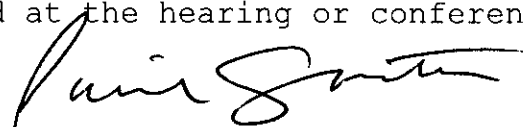
MAY 30, 2007

Date of Hearing

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June 15, 2007

Pierre Smith



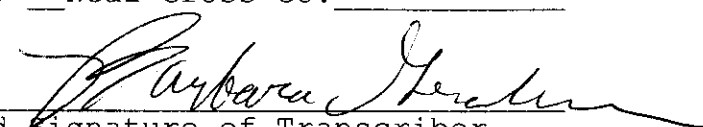
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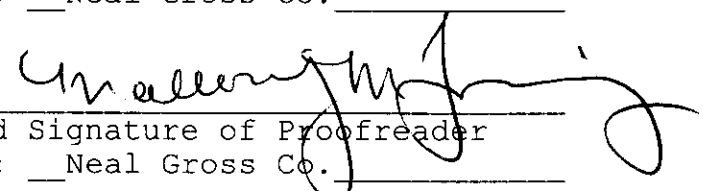
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